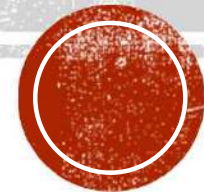




With the support of the  
Erasmus+ Programme  
of the European Union

# "MARRIAGE INSTITUTION, CIVIL UNIONS, AND GENDER ISSUES IN SOCIOLOGICAL AND LEGAL PERSPECTIVE"

EU HEALTH ISSUES PROJECT  
UNIVERSITY OF NEW YORK, TIRANA



Dr. Ermira Danaj

# DEFINITIONS

- **Marriage:** Marriage, as a legal cohabitation, is founded on the moral and legal equality of the spouses, in the mutual sentiment of love, respect and understanding, as the basis of unity in the family. Marriage and family enjoy special protection from the state. Marriage can be concluded between a man and a woman who are 18 years or older. (Family Law Albania)
- Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others. Marriage requires the free and enlightened consent of two persons to be the spouse of each other. (Family Law Canada)
- Cohabitation is a factual union between a man and a woman living as a couple, with a common life that is stable and continuous in nature. The cohabiting individuals can sign an agreement in the presence of a public notary, whereby they determine the consequences resulting from cohabitation in relation to children and assets acquired during the cohabitation.
- **civil union**, legal recognition of the committed, marriagelike partnership of two individuals. Typically, the civil registration of their commitment provides the couple with legal benefits that approach or are equivalent to those of marriage, such as rights of inheritance, hospital visitation, medical decision making, differential taxation, adoption, employee benefits for partners and dependents, etc. Depending upon the jurisdiction, such status may be available only to same-sex couples, for both same-sex and heterosexual couples equally, or to all same-sex and some heterosexual couples.



- **Socio- legal perspective of marriage, divorce, cohabitation, etc.**
  - **Change across countries (previous slide)**
  - **Change in time (e.g. Albania)**
    - **1918 census: the average age at marriage was 18 years old for women and 28 for men.**
      - **By 15 years old, 29 per cent of all females were married, while more than half were married by age 18 years, and more than four-fifths at age 20 years**
      - **The mean age difference between spouses was 9.6 years, The wide age gap between spouses may be considered to be an indicator of their unequal positions within the family, making male domination within the household very effective. Remarriage of widows was rare, that of widowers was frequent.**
    - **Consensual unions were almost inexistent.**
    - **The Civil Code approved in 1928 changed in women's situation at least from a legal perspective. The approved civil code marked an official departure from the traditional, customary laws prevalent throughout the county and instead recognised women's 'right to divorce, and equality with the husband regarding the right to inheritance'. Another achievement was the establishment of the minimum age for marriage at 16 years old for girls and at 18 years old for men.**



- the new Constitution of March 14, 1946, granted equality of rights between women and men. According to the new law on marriage adopted in 1948, marriage was based on the equal rights of both spouses. One of the major changes in this new law was the age of marriage: 18 years for both sexes. The concept of the head of the family, recognised by pre-communist civil law, was rejected. Under the 1948 law, each spouse had the right to choose their occupation, profession and residence and to ask for divorce (gap between law and practice)
  - The basic divorce law, originally passed in 1948, provided that either spouse may ask for divorce on the grounds of incompatible character, continued misunderstandings, irreconcilable hostility or any other reason that disrupted marital relations to the point where a common marital life had become impossible (gap between law and practice)
- New Family Code was approved in 2003. There have been debates around the draft law because of cohabitation, children out of marriage and same sex marriage.
- The average age of marriage has increased both for men and women (men marry later than women) [in 2020 average marriage age at 27.7 years old for women, and 31,1 for men, compared to 1990, 23.0 years for women in 1990 and 27.3 years for men]
- Marriage rate remains quite stable in Albania, while cohabitation is still marginal
- The percentage of married women ages 16–29 years is higher in rural areas. Also, those with university degrees have lower marriage rates than those with lower education levels.



# MARRIAGE AS A GENDERED INSTITUTION

- Patriarchy means unequal social systems where women are subordinated, discriminated or oppressed.
- Marriage as playground of patriarchal gender relations
  - Family name
  - Family certificate and head of household
  - Unequal gender division of labour
  - Unequal economic resources and property
  - Gender based domestic violence
- shock theory of marriage
- a greater shock for women - change of surname, lifestyle according to the husband mostly, pressure to follow the head of household, according to the gender configurations of the society. Regardless of whether both are employed or only the husband is employed, it is likely that his job will have the greatest influence on the couples lifestyle, including where they live and how often they move

(examples)



## SOME HISTORICAL POINTS

- equal rights within marriage have been in the centre of women movements in various parts of the world –
  - within a marriage women had no (or few) rights compared to men,
  - they needed their husband permission to do various activities, travel, work, etc.
  - no right to divorce, so if they decided to separate or divorce they could not see their children, and they lost everything (economically and socially)
    - E.g. France
      - When divorce by mutual consent was instituted in France in 1975, it had been only ten years since married women had been able to open a bank account, sign an employment contract, and manage their personal property without their husbands' consent. They had only gained parental authority over their children – previously reserved for “family heads” – in 1970. In this sense, the right to divorce was part of a long movement towards equal rights between women and men and the recognition of individual rights in the private sphere.



- the unequal gender division of labour within the marriage relations continue in most of countries confining women to the unpaid care work and men to the paid one.
- Unequal resources imply unequal power and dependency.
  - his and her marriage
- In most of cases, women are under a multiple burden (paid and unpaid work)
  - Gender pay gap (how marriage influences women and men employment)
  - Time Use Surveys



- Violence against women - as part of the patriarchal configuration of marriage.
- Heterosexual marriage remains marked by systemic gender based violence
  - Domestic violence: sociological and legal perspective
- In AL, 47% of women have experienced intimate partner violence
  - For about 40 percent of the women, the domestic violence began already during the first year of marriage.
  - 21% physical violence
  - 8,6% marital rape

In Spain, the Organic Act of 2004 also provides for specialised “gender-based violence” courts established in all regions of Spain. The system of these specialised courts offers the advantage that the judge can impose a whole range of measures beyond just issuing EBOs and expelling the perpetrator from the home, which leads to assessing regularly whether there are criminal acts to be punished. According to the law, EBOs must be issued immediately and no later than 72 hours after the incident is reported. The “gender-based violence” court system in Spain is on call round the clock in order to be able to provide emergency measures. In Madrid, two gender-based violence courts are available 24 hours a day. These specific courts deal not only with criminal offences, but also with civil and family law. They can apply various measures to protect and support victims, and gives the judges of the specialised courts the possibility to issue integrated protection measures of criminal, civil and social nature.





# CIVIL UNION AND SAME SEX MARRIAGE

- Same sex marriage mostly in Western countries
- Civil union was (is) used as a preliminary phase in those countries where same sex marriage is not allowed yet.
  - Less shaped by the unequal gender relations - they transcend the gendered division of the heteronormative marriage. Research has found that the division of labour within and without household is more equally shared.
    - #between sexual orientation and gender roles and expectations
- Debate about complying with the patriarchal institution of marriage or preserving the freedom and flexibility of the civil union/same-sex relationship?

